IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3788 OF 2007

Asha Dattatray Buchake .. Petitioner.

V/s.

1. State of Maharashtra & Ors. .. Respondents.

Mr.R.K.Mendadkar for the Petitioner.

Mr.C.R.Sonawane, AGP for the Respondents.

CORAM : F.I. REBELLO AND
R.M. SAVANT, JJ.

DATED : 25th JUNE, 2007.

P.C. :- (Per R.M.Savant,J)

. Rule. Rule with the consent of the parties made returnable forthwith and heard finally.

2. This petition filed under Article 226 of the Constitution of India, impugns the order dated 09.01.2007 passed by the Respondent No.2-Caste Scrutiny Committee, invalidating the caste certificate of the petitioner as belonging to the Kunbi-OBC. Such of the facts which are necessary to be cited are stated thus :

3. The petitioner has been issued a certificate on 08.08.2006 belonging to Kunbi OBC by the competent authority, being Sub-Divisional Officer at Khed,

Dist.Pune. As the petitioner intended to contest elections to the respondent No.3 Zilla Parishad, Pune, she moved the concerned authorities for verification of her caste certificate. The Collector who is the authority for the said purposes referred the petitioner's case to the Respondent No.2 Committee.

4. Upon such reference, the Committee commenced enquiry through the vigilance cell who submitted its report to the Committee. Thereafter the petitioner was called for hearing on 9.1.2007 when she pointed out to the Committee her intention to produce additional documents. The petitioner further pointed out to the Committee that the report of the vigilance cell is in her favour and therefore, she was entitled to validity certificate. It is the case of the petitioner that she was granted time to produce additional documentary evidence. The petitioner collected the said additional documentary evidence and approached the Committee on 15.1.2007 for submitting the said documentary evidence. However, according to the petitioner she was told that as the vigilance report was in her favour, there would be no difficulty in deciding her case. It is the case of the petitioner that, the committee without giving opportunity to the petitioner to produce additional documentary, invalidated the caste certificate of the

petitioner by the impugned order. The committee mainly relied upon the birth and death extract of the daughter of the great grandfather of the petitioner which dated back to the year 1920, which shows caste as Kunbi. The committee came to a finding that the petitioner did not belong to the said Kunbi caste, as the petitioner has produced no other evidence supporting her caste claim, except the birth and the death register for the year 1894, in respect of the relative i.e. daughter of grate grandfather Muktaji Narayan Gavade. The committee held that since prior to 1990 the caste Kunbi used to be identified by occupation, after 1920 they used to be called as Marathas.

5. We have heard the learned counsel for the respective parties. On behalf of the petitioner an additional affidavit has been filed in support of the petition, wherein she has given the family genealogy. On the basis of the said genealogy the petitioner contends that the finding of the Committee that the name Kondaji Dwarku Gavade is not found in the genealogy tree of the petitioner cannot be sustained. The said Dwarku is shown as one of the ancestors of the petitioner in the said genealogy. The petitioner also has birth extracts of her grand father from the paternal side dated 20th of July, 1914 in which his caste is recorded

as Kunbi. As also the death extract of the great grand father of the petitioner Muktaji Narayan Gavade and the death extract of Dwarku Bandaji Gavade, real brother of her great great grand father, who died on 10th August, 1915, in which in his death extract, the caste is recorded as Kunbi. The petitioner states that there were various other documents in her possession relating to back to 1940, a mention of which is made in the said additional affidavit.

6. In view of the fact that the said documents were not taken on record and in fact were not allowed to be produced by the committee inspite of the petitioner's request for the same, we deem it proper to set aside the impugned order of the committee dated 09.01.2007 and remand the matter back to the respondent No.2 Committee for a decision afresh in respect of the caste claim of the petitioner. On such remand, the respondent No.2 committee is directed to decide the petitioner's caste claim within four months from the receipt of the order of this court. The petitioner would be at liberty to produce additional evidence as mentioned into additional affidavit filed in the above petition.

7. Rule is accordingly made absolute in the aforesaid terms with parties to bear their respective

costs.

(F.I.REBELLO,J.)

(R.M.SAVANT,J.)